THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4547 of 2007

.4.2007

Between:

Satyaveti Kamala Manoharamma, W/o.Late David Williams

... Petitioner

AND

Pantrangam Venkatesu, S/o.Peeraiah

... Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4547 of 2007

ORDER:

The petitioner herein filed an application being A.T.C.No.1 of 2001 on the file of the Court of the Junior Civil Judge and Special Officer, Sullurpet, under Section 13 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (the Act, for brevity) for eviction of the respondent on the ground that he failed to pay the rents regularly and that he is denying the title of the petitioner. By an order dated 01.8.2005, learned Junior Civil Judge allowed A.T.C.No.1 of 2001 ordering eviction of the respondent subject to the decree of permanent injunction passed in O.S.No.110 of 1997. Respondent filed appeal being CMA No.51 of 2005 on the file of the Court of the Principal District Judge, Nellore. By impugned order dated 07.9.2006, the same was allowed giving liberty to the petitioner herein to seek redressal by filing a suit for declaration and recovery of possession. In these proceedings for Certiorari the petitioner seeks an order quashing the order of the appellate authority.

In her application before primary authority, the petitioner pleaded that her husband, David Williams, was the owner of the property admeasuring Acs.2.80 in survey No.44/2 situated at Kotapoluru village of Sullurupet Mandal in Nellore District and that after her husband succeeded to the property the same was leased out to the respondent in 1979 on yearly maktha of 15 thooms. She alleged that the respondent failed to pay the rents regularly and also claimed that he is the owner of the property based on entries in the revenue records. The respondent also filed a suit being O.S.No.110 of 1997 for permanent injunction. The respondent opposed the ATC and pleaded that Pantrangam Chengaiah and the father of the respondent (Peeraiah) were brothers, that they divided the property by oral partition and that the petition schedule property and another extent of Acs.0.42 insurvey No.47/3 situated at Kotapoluru village fell to the share of the

respondent's father. He also alleged that Chengaiah and his wife, Saramma, settled in Srikalahasthi, and that Saramma ignoring partition, executed a settlement deed in favour of David Williams in respect of the property that fell to the share of her husband Chengaiah and also the property fell to the share of respondent's father, Peeraiah. Though David Williams was aware of this, he kept quiet during the lifetime of Peeraiah and that Peeraiah alone was paying cist till his death. After his death in 1979, respondent succeeded to the property and he is in absolute possession of the land. He also approached the authorities and obtained rythu passbook and title deed in his favour. He dug a bore well in the land in 1991 after obtaining loan from Syndicate Bank and obtained agricultural electricity service connection No.644 from Andhra Pradesh State Electricity Board. He also obtained decree for permanent injunction in O.S.No.110 of 1997 and, therefore, the ATC is barred by *res judicata*.

The petitioner herein was examined was P.W.1 and marked Exs.A.1 to A.24. She also examined P.W.2 whereas the respondent examined himself as R.W.1 and marked Exs.B.1 to B.6. He also examined R.Ws.2 and 3 to support his case. Learned primary authority allowed the application for eviction, which was reversed by the appellate authority as noticed supra.

Learned Counsel for the petitioner submits that the appellate authority failed to consider the case of the petitioner in proper perspective and that the finding of the civil court as to the title is not binding on subsequent proceedings under the Act. He also submits that the settlement deed dated 11.1.1968 by Saramma in favour of the petitioner's husband is 30 years old and that being a registered document carries a presumption as to its correctness.

The question essentially that fell for consideration before the appellate authority was whether the petitioner's husband acquired any right, interest or title in the petition schedule property by reason of the settlement deed dated 11.1.1968. The appellate Court found that in view of the decree in O.S.No.110 of 1997 in favour of the respondent, there could not be any eviction under the Act. The judgment was marked as Ex.B.6 in which the plea of the petitioner that the respondent is a tenant was negatived by the primary authority. Curiously the primary authority ignored the same but the appellate authority corrected it. In this regard the appellate authority rightly observed as under.

> When once the court considers that a relief of permanent injunction is also granted in O.S.No.110 of 1997 there is no point in granting order of eviction in this petition and restricting the right of execution subject to the hurdle in O.S.No.110 of 1997. Nobody can contemplate as to what is hurdle that can be get over without there being an appeal

> against the judgment and the findings of the Tribunal are set aside. It is understandable from the reading of the judgment Ex.B.6, Civil Court has held that relationship of landlord and tenant does not exist and in fact the rights of the appellant herein in the suit schedule property are recognized. When once such findings of the civil court is recorded, it cannot be set at rest by the tribunal of limited jurisdiction.

Learned Counsel for the petitioner however strenuously submits that the learned District Judge, appellate authority, did not consider the factual background in proper perspective. I am afraid this question cannot be raised in a proceedings for Certiorari. This principle is well settled. A reference may be made to **Syed Yakoob v Radhakrishnan**[1] and a Division Bench Judgment of this Court, to which I was a member, in **A.Ratnam v Government of A.P.**[2]. In **Syed Yakoob** (supra), a constitution Bench of the Supreme Court held as under.

> … What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari… If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each cases and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

In **A.Ratnam** (supra), the Division Bench of this Court laid down the following principles for testing the validity of the order passed by the statutory authority.

i) The High Court is not an appellate authority over the decision of the Administrative Tribunals;

ii) While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;

iii) The petition for a judicial review would lie only on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however grave it may appear;

iv) When the Tribunal renders a decision after determining the facts, no application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however grave it may appear, unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error of law in the sense that admissible evidence was rejected and inadmissible evidence was relied on;

v) The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;

vi) When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the binding principle has been appropriately applied or not; the Tribunal's decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;

vii) Whether or not an error is error of law apparent on the face of the record must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened;

viii) The three parameters of judicial review of administrative action – illegality, irrationality and procedural impropriety with necessary changes are equally applicable to cases of judicial review of the Tribunal's decision;

In this case, the factum of the decree passed under Ex.B.6 is not denied. Further the appellate Court also observed that it shall be open

to the petitioner to seek a declaration by filing separate suit based on the settlement deed. Therefore, the order of the learned District Judge is unexceptionable.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(**V.V.S.RAO, J**)

April , 2007.
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[1] AIR 1964 SC 477

[2] 2001(6) ALT 661 (DB)